IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1268 of 2006
In
SPECIAL CIVIL APPLICATION No. 3538 of 1995
With
CIVIL APPLICATION No. 11629 of 2006
In LETTERS PATENT APPEAL No. 1268 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE
HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE CHAIRMAN-CUM-MANAGING DIRECTOR & 1 - Appellant(s)
Versus
ML RANA EX. C.S.K. - Respondent(s)

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Appearance :
MR RAJNI H MEHTA for Appellant(s) : 1 - 2.
MR BS PATEL for Respondent(s) : 1,
MRS RANJAN B PATEL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

and

HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 04/12/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.L.DAVE)

1. The appellants challenge the judgment and order dated 26.6.2006 passed in Special Civil Application No.3538 of 1995. The present respondent who was the original petitioner in the said petition preferred the said petition seeking the following reliefs.

> "(a) To issue a writ of or in the nature of mandamus or any other appropriate writ order or direction quashing and setting aside the order of the Resp.no.2 dt 14.7.93 at Ann "A" and order of Resp.no.2 dt 8.7.94 at Ann B and the order of the Director (Vig) dt 13.9.1994 at Ann C;
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> (b) That during the pendency, admission and final disposal of this petition, YOUR LORDSHIPS BE PLEASED to stay the execution, implementation and operation of the order of the Resp.no.2 dt 14.7.93 at Ann "A" and order of Resp.no.2 dt 8.7.94 at Ann B and the order of the Director (Vig) dt 13.9.1994 at Ann C;"
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> (c) To grant any other appropriate and just order/s.

2. The petitioner was serving as a Chief Store Keeper with the appellant ONGC on its Mehsana Project at Mehsana. While in service, he was served with the chargesheet. The articles of charges indicate that the petitioner while working as Chief Store Keeper, ONGC, Ankleshwar Project at Ankleshwar committed gross misconduct by not obtaining prior permission of the competent authority of the Corporation before taking part in the registration, promotion and management of M/s Jai Bharat Travel Co-operative Society Limited, Ankleshwar; established with a commercial object for the welfare of SC/ST, OBC and land losers. The second fold of the charge was that he furnished wrong information about the purchase price of the car while taking car advance from the appellant Corporation. He took a loan of Rs.44,800/- from the Corporation. However, he paid only Rs.29,730/- and by doing so, misutilized the Corporation's money to the extent of Rs.15,070/-. It was, therefore, charged that his acts were unbecoming of an employee of the Corporation. The petitioner tendered his reply and contested the charges levelled against him. The departmental inquiry was proceeded against him and the Inquiry Officer submitted the report on 9.10.1992 holding that both the charges levelled against the petitioner were proved. Thereupon, the petitioner came to be served with notice on 25.2.1993 along with the copy of the Inquiry Officer's report. The petitioner tendered a reply on 3.5.1993. The disciplinary authority passed

an order on 14.7.1993 accepting the report of the Inquiry Officer and held the petitioner to be guilty of both the charges levelled against him and imposed a penalty of compulsory retirement. The petitioner preferred an appeal against the said order which came to be rejected by communication dated 8.7.1994. The petitioner, therefore, approached this Court with the petition.

2.1 After hearing rival sides, learned Single Judge allowed the petition and quashed and set aside the orders passed by the disciplinary authority and appellate authority on 14.7.1993 and 8.7.1994 respectively and remanded the matter to the respondents for reconsidering whether charge No.1 regarding the petitioner having become member of co-operative society for commercial activity without permission of the competent authority can be said to have been proved and further to consider the question of penalty if at all the question arises. Learned Judge came to a conclusion that charge No.2 cannot be said to have been properly established. The defence that is raised by the petitioner was possible one and, therefore, the benefit ought to go to him. It is this order that has aggrieved the appellants original respondents.

3. Learned advocate Mr.Rajni Mehta appearing for the appellants submitted that entire exercise of reconsidering the case was unwarranted. Learned Single Judge has himself come to the conclusion that

it was not possible to accept the petitioner's case that the co-operative society in question was not doing any commercial activity but was carrying on any charitable activity. It has also been concluded that the petitioner was a member of the said society, the object of which was commercial. The allegation – charge that this was done by him without prior permission of the appellants as required under the Rules is not controverted by the petitioner, and, therefore, there was no need to remand the matter.

3.1 Learned advocate Mr.Mehta further submitted that because of lapse of time, most of the officers who conducted the disciplinary proceedings have either retired or have been transferred and under the circumstances, it may not be possible for the appellants to comply the order of reconsideration. Mr.Mehta, therefore, submitted that this appeal may be allowed.

4. Learned advocate Mr.B.S.Patel submitted that learned Single Judge has considered all relevant aspects. The remand of the matter is for the purpose of examining the question whether the charge against the petitioner of becoming member of the society engaged in commercial activity without permission of the competent authority can be said to have been proved. This is done in light of the fact that there is evidence of Shri R.R.Mehta who has admitted that the petitioner did apply for permission and that application was forwarded by him. Learned Judge,

therefore, deemed it proper to refer the matter back to the authority to examine the question keeping this aspect in mind.

4.1 Learned advocate Mr.Patel submitted that so far as second charge is concerned, learned Single Judge has found that the defence of the petitioner that book value of the car was Rs.29,730/-, but it was purchased by the petitioner for Rs.45,001/-. A receipt of that amount has been produced by the petitioner issued by previous owner. Mr.Patel submitted that more weightage has to be given to the documentary evidence than the oral version unless documentary evidence is found to be untrustworthy. There is no material whatsoever on record to render the receipt issued by the previous owner untrustworthy or doubtful as against the say of the previous owner that he had sold the car for the price indicated in his books of accounts. Mr.Patel submitted that it is a matter of common knowledge that the price of the vehicle would not be fixed in odd amounts and, therefore, the decision of learned Single Judge does not call for any interference by this Court. Mr.Patel, therefore, submitted that the appeal may be dismissed.

5. We have taken into consideration the rival side submissions and have examined the merits of the case.

5.1 We propose to deal with the case against the

petitioner in respect of second charge first.

5.1.1 The charge is that he has obtained loan from the appellant by giving incorrect price of the car purchased by him after obtaining the loan. The price indicated was Rs.45,001/- whereas the price paid was Rs.29,730/-. This was sought to be proved by examining the previous owner of the car who sold the car to the petitioner and he indicated that he had taken Rs.29,730/- in his books of accounts being the sale price of the car. Of course, a receipt issued by him for Rs.45,001/- is also part of the record and there is no material to brush aside that documentary evidence except the oral version of the vendor that he had signed a blank receipt. The case of the petitioner was that showing sale price of Rs.45,001/- would have exposed the seller to tax incidence and that the books of account indicate the book value of the car of about Rs.29,730/- after deducting the depreciation. Learned Judge concluded that in such circumstances even if the inquiry officer did not want to discard the seller's version, the petitioner was entitled to be given the benefit of doubt in respect of this charge. We are in agreement with the view expressed by learned Judge for the additional reason that sale price or marked price of a car, ordinarily, would not be identical to the book value of the car and that too in an odd figure. Further reason is that the vendor had issued the receipt of Rs.45,001/- indicating that he received that amount

towards the sale consideration of the car in question and there is no reason for not believing the same except that he says that he had issued blank receipts. Why a person should or would issue a blank receipt is a question that is difficult to answer. Such receipt may obviously create some complications. In absence of special circumstances for issuance of such a blank receipt, such version is difficult to be accepted. Under the circumstances, the finding of learned Single Judge on second charge seems to us to be just, legal and proper not calling for any interference in exercise of appellate powers.

6. Coming to the first charge, there is evidence of Shri R.R.Mehta on record who admits that an application from the petitioner was received seeking permission to become member of the society. He also admits to have forwarded the same with his remarks. What has happened to that application is not known. Whether permission was granted, whether permission was refused or no order was passed thereunder is a question that glares at us without any answer. Learned Judge was, therefore, justified in remanding the matter for a decision afresh on this question, that is, whether charge no.1 is proved and if so what could be the quantum of punishment. It may be noted that learned Single Judge did not accept the case of the petitioner that the cooperative society of which he was member was not engaged in commercial activity but was engaged in charitable activities. But the question still remains as to whether the

petitioner can be said to have become member without permission of the appellants when there is material on record to show that he had applied for permission before becoming member and when there is no material to show as to what happened to that application. Question that still remains is, can it be concluded that there was no permission in favour of the respondent when there is no evidence to show as to what happened to the application which was tendered by the respondent as admitted by witness R.R.Mehta.

7. In our view, there still is another factor in support of the order of remand. The order of punishment was passed against the appellant on the foundation that both the charges levelled against the petitioner were proved. Now, learned Single Judge has come to the conclusion that charge no.2 cannot be said to have been proved and rightly so. In such a situation, what is left behind is the question whether punishment can be the same even if the first charge is proved and what could be the punishment which would be proportionate to the said charge. It certainly cannot be the same for the reason that the punishment was inflicted for two misconducts allegedly proved against the petitioner. Now that one of the charges is held to be not proved against the respondent, the question will have to be re-examined as to what could be the punishment for one misconduct.

8. In light of what is discussed in the

foregoing paragraphs, we are of the view that the finding of learned Judge that charge no.2 is not proved and that the question as to whether the charge no.1 can be said to have been proved requires reconsideration is just, legal and proper and calls for no interference in exercise of appellate powers under the Letters Patent. The appeal, therefore, must fail and stands dismissed. No costs.

9. In view of the order passed in the Letters Patent Appeal, Civil Application stands disposed of accordingly.

10. At this stage, learned advocate Mr.Mehta seeks extension of time for deciding the matter after remand. Learned Single Judge had granted time of four months to be computed from the date of receipt of writ of the judgment or a certified copy of judgment whichever is earlier which has been stayed by this Court. Under the circumstances, we also direct that the appellants shall undertake and complete exercise within four months from the date of receipt of writ of this judgment or certified copy of this judgment whichever is earlier.

(A.L.DAVE, J)

(SHARAD D DAVE, J)

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